APPENDIX A

PARTIES FILING COMMENTS AND REPLY COMMENTS

Commenter	Abbreviation
Alaska. Regulatory Commission	RCA (late filed on 11/13)
State of Alaska	State/Alaska
Alaska Telephone Association	
ACUTA, Inc.: The Association for Telecommunications Professionals in Higher Education	ACUTA
Ad Hoc Telecommunications User Committee	Ad Hoc
Alliance for Public Technology	APT
AT&T Corp.	AT&T
AT&T Wireless Services, Inc.	AWS
BellSouth Corporation	BellSouth
People of the State of California and California Public Utilities Commission	California/CPUC
Cellular Telecommunications & Internet Association	CTIA
Community Voice Mail	
Competitive Universal Service Coalition	CUSC
Converging Industries Research Foundation	CIRF
Florida Public Service Commission	FPSC
General Services Administration	GSA
GVNM' Consulting, Inc.	GVNW
Illinois Commerce Commission	ICC
Iowa Utilities Board	Board
Judycki, Stephen A.	
Maryland Public Service Commission	MD PSC
Montana Universal Service Task Force	MUST
National Telephone Cooperative Association	NTCA (late filed on 11/13)
Nebraska Rural Independent Companies	
New York State Department of Public Service	NYDPS
Organization for the Promotion and Advancement Of Small Telecommunications Companies	OPASTCO
Qwest Communications International Inc.	Qwest
Rural Cellular Association	RCA
Sandwich Isles Communications. Inc.	Sandwich Isles
SBC Communications Inc	SBC
Sprint Corporation	Sprint
TDS Telecommunications Corporation	TDS Telecom
Telecommunications for the Deaf, Inc.	TDI
Texas 9-1-1 Agencies and National Emergency Number Association	NENA
United States Cellular Corporation	USCC
United States Conference of Catholic Bishops, *et al.*	USCCB *et al*
United States Telecom Association	USTA

Valor Telecommunications Enterprises. LLC	Valor
Verizon	
Verizon Wireless	
WorldCom. Inc.	WorldCom

Reply Commenter	**Abbreviation**
Ad Hoc Telecommunications User Committee	Ad Hoc
American Public Communications Council	APCC
AT&T Corp	AT&T
BellSouth Corporation	BellSouth
Competitive Universal Service Coalition	CUSC
General Communications Corp.	GCI
General Services Administration	GSA
GVNW Consulting. Inc.	GVNW
Mid-Rivers Telephone Cooperative. Inc.	Mid-Rivers
Montana Telecommunications Association	MTA
Montana Universal Service Task Force	MUST
N.E. Colorado Cellular, Inc.	NECC
Nebraska Rural Independent Companies	NRIC
Organization for the Promotion and Advancement Of Small Telecommunications Companies	NY DPS OPASTCO
Rural Utilities Service	RUS
Sandwich Isles	SIC
SBC Communications Inc	SBC
TDS Telecommunications Corporation	TDS Telecom
US Cellular Corporation	USCC
United States Conference of Catholic Bishops, *et al*	USCCB *et al*
Verizon	
WorldCom. Inc.	WorldCom

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Federal-State Joint Board on Universal Service. Recommended Decision (released July 10. 2002).

I commend my colleagues on the Joint Board for their thorough consideration ofthe important issues raised in this proceeding and for their valuable contributions to this Recommended Decision. As Chair of the Joint Board. I am pleased that the processes we have put in place are enabling us to engage in efficient and effective decisionmaking.

I wnte separately to elaborate on my reasons for opposing the addition of equal access to interexchange services to the list of supported services. In short, the arguments advanced in support of adding equal access are wrong on the law. wrong on the facts. and wrong on policy. While the vote by the Joint Board Members could not have been closer. I believe this issue is actually fairly straightforward: Congress made crystal clear that CMRS camers "shall not be required to provide equal access." 47 U.S.C. § 332(c)(8). Because adding equal access to the list of supported services would require CMRS carriers io provide that functionality as a condition of becoming eligible telecommunications camers, *id* § 214(e), such a requirement plainly would violate congressional intent. Moreover, equal access fails to satisfy the criteria in section 254(c). Indeed, because all consumers *already* are ensured of access to interexchange services, equal access has little. if anything, to do with universal service. Finally, while rural LECs have raised a legitimate concern about our ponability rules — because CMRS carriers that do not provide equal access may be receiving universal service support that is allegedly based in pan on the cost of providing equal access — the Commission, with my strong support, intends to address that issue in an upcoming rulemaking proceeding. Especially in light of that upcoming proceeding, we should not manipulate the definition of universal service as a backdoor means of responding to concerns about the manner in which competitive ETCs receive suppon.

1. Equal Access Is Inconsistent with Section 332(c)(8).

In 1994, the Commission issued a Notice of Proposed Rulemaking concerning the potential imposition of an equal access obligation on CMRS carriers.[176] Positing that such a requirement "would increase competition in the interexchange and mobile services marketplace, and also foster regulatory parity between wireline and wireless services,'' the Commission tentatively concluded that "equal access obligations should bc imposed on cellular licensees."[177] Congress disagreed. In the I996 Act. Congress enacted section 332(c)(8). which expressly hnrs the Commission from requiring CMRS carriers to provide equal access to toll services.[178]

---

[176] *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services.* Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, 9 FCC Rcd 5408 (1994) ("*CMRS Equal Access NPRM*").

[177] *Id* at 5411 ¶ 3

[178] Pub. L. No 104-104, § 705 (1996), codified at 47 U.S.C. § 332(c)(8)

Proponents of an equal access argument contend that by conditioning eligibility for universal service support on compliance with an equal access requirement. rather than imposing an equal access obligation on CMRS carriers directly. the Cornmission could comply with the letter of section 332(c)(8). That is a questionable proposition at best. since denying or revoking a CMRS camer's ETC designation for its failure to provide equal access seems tantamount to imposing a "requirement" on the carrier. But even if such an indirect obligation could skirt the statutory prohibition. that misses the point. In response to the Commission's previous effort to impose equal access on CMRS camers. Congress spoke loudly and clearly in opposition to such a requirement. We should be faithful to that plain statement of legislative intent, rather than seeking uays around it.

Moreover. it is no answer to say that CMRS carriers can avoid being subject to an equal access requirement by foregoing universal service support Presenting CMRS carriers with such a Hobson's choice would undercut the core procompetitive goals of the 1996 Act.[179] Because all wireline camers already are obligated to provide equal access,[180] the only consequence *of* adding equal access to the list of supported services would be to require CMRS camers seeking ETC status to provide equal access. The costs of complying with such a requirement undoubtedly would deter competitive entry in high-cost areas where service can be provided economically only if explicit universal service support is available. Because Congress wanted *both* Io exempt CMRS carriers from equal access obligations *and* to promote competition **in** all telecommunications markets, the only reasonable conclusion is that making the provision of equal access a prerequisite to obtaining (or retaining) ETC status is fundamentally at odds with congressional intent.[181]

2. Equal Access Fails **To** Satisfy **the** Criteria in Section **254**(c) and in Particular Would **Not** Serve the Public Interest.

Even if Congress had not made plain its intention to exempt CMRS carriers from equal access obligations, the factors set forth in section 254(c) would not support adding equal access to the list of supported services. Section 254(c) directs the Commission to consider whether the telecommunications services at issue

[179] ***See*** *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No 96-45, 12 *FCC* Rcd **8776,** 8820 ¶ 79 (1997) ("*Universal Service First* ***Reporr*** *and Order*") (noting that imposition of an equal access requirement would "undercut local competition") (citing Joint Explanatory Statement of the Committee of the Conference. H R. Kcp No. 104-458 at 113 (1996)) *See also* 47 **!!**S C ~ 214(e) (defining "eligible telecommunications carrier.' without rcpard to technology).

[180] The equal access obligations grew out of the Bell System divestiture decree (the Modification of Final Judgment, or MFJ). and later were extended to all wireline camers by the Commission. *See CMRS Equal Access NPRM*, 9 FCC Rcd at **5412-13** ¶¶ 6-9

[181] As the Commission **explained** in the *Universal Service First Reporr and* ***Order,*** I? FCC Rcd at 8819-20 ¶ **79.** declining to add equal access to **the** list of supported services does noi **run** afoul of the Commission's principle of compeiitive neutrality. Indeed. the Commission noicd ihai the competitive neutrality principle is intended to ensure ihai universal service policy is not "biased toward any particular technologies," *id.*. and, in this context, *adding* equal access io he list ofsupponed services, rather than refraining from doing so, would bias universal service policy against a particular class *of* carriers — CMRS carriers.

> (A) are essential *to* education. public health, or public safety;
> (B) have. through the operation of market choices by customers. been subscribed to by a substantial majority of residential consumers;
> (C) are being deployed in public telecommunications networks by telecommunications camers; and
> (D) are consistent with the public interest. convenience. and necessity [182]

First. the fact that access to interexchange service already is a supported service — and therefore one that all ETCs must provide — undermines any argument that equal access is "essential" to education, public health. or public safety. In other words, since access to interexchange service already is universal, adding equal access to the list of supported services is not necessary to ensure such access.

Proponents of requiring equal access focus on the procompetitive benefits it supposedly would entail. Bur enhancing competition in the already-competitive interexchange market — assuming for the moment that forcing CMRS carriers to provide equal access in fact would have such an effect — is entirely distinct from our task here. the preservation and advancement of universal service. The history of our existing equal access requirements for wireline carriers is instructive. When the MFJ court ordered the breakup of AT&T, it was concerned that, absent judicial intervention. AT&T would squelch competition from other IXCs.[183] The court accordingly ordered the BOCs to offer to all IXCs access to the local exchange network that is "equal in type, quality, and price" to that offered to AT&T and its affiliates.[184] The Commission extended the equal access obligation to all wireline camers in 1985 as a further means of ensuring unfettered competition in the developing interexchange market.[185] Thus, equal access was established as an antitrust remedy — not as a universal service policy. And today, the focal point of the debate over equal access remains competition, rather than universal service. When proponents of imposing an equal access requirement speak of "advanc[ing] customer choice," Recommended Decision at ¶ 77, they are essentially expressing a desire to promote greater interexchange competition. not to support universal access to a critical residential service; again. such access *already* is universal.

Moreover, I do not agree with the premise that imposing an equal access requirement on CMRS carriers would be beneficial for competition or consumers. **As** noted above, we should not even be having this debate. because Congress settled this policy call in the text of section 332(c)(8) of the Act. But if I were to make a decision based on policy considerations, I would agree with Congress that allowing wireless carriers to offer consumers innovative service packages including bundles of any-distance minutes promotes. rather than harms, consumer

---

[182] 47 U.S.C. § 254(c).

[183] *CMRS Equal Access NPRM*, 9 FCC Rcd at 5412 ¶ 6

[184] *United States v AT&T*, 552 F. Supp 131, 227 (D.D.C *1982). aff'd sub* **nom** *Maryland v. United States*, **460 U.S** 1001 (1983).

[185] *CMRS Equal Access NPRM*, 9 FCC Rcd at 5413-14 ¶ 9

welfare. There can be little question that both the interexchange and mobile wireless market, are highly competitive, and that wireless camers' innovative offerings have led to extensive internodal competition. And if a wireless subscriber seeks to use the services of a particular IXC, she can presubscribe to that IXC over her landline phone and also can reach the IXC on a wireless phone on a dial-around basis.

Tellingly, none of the IXCs that participated in this proceeding — the would-be beneficiaries of an equal access requirement — supported imposition of such a requirement. For example, AT&T argued that subjecting CMRS carriers to an e ual access requirement "would thwart competition from alternative providers in rural areas."" "Rather than adopt requirements that exceed the Communications Act and have nothing to do with a particular camer's or class of camer's ability to offer universal service." AT&T contends. "the Commission's eligibility criteria should promote competition from as many sources and technologies as possible."[186] Similarly, WorldCom argues that an overly expansive definition of universal service would thwart competition,[188]

Equal access also lacks support under the remaining factors in section 254(c). The second criterion is whether the service at issue has been subscribed to by a substantial majority of residential consumers through the operation of market choices by customers, and the third is whether it is being deployed in public telecommunications networks by telecommunications carriers. 47 U.S.C. § 254(c)(1)(B), (C). It is difficult to gauge whether equal access satisfies these criteria, because the existence of a regulatory mandate has both precluded the exercise of market choice and necessitated deployment by all wireline camers. But to the extent that the deployment of equal access has been left to voluntary market choices — that **is,** in the wireless arena — it has neither been subscribed to by a substantial majority of consumers nor deployed by carriers. Moreover, applying the second criterion literally, the fact that consumers do not "subscribe" to equal access suggests that it is nor the kind of service that Congress envisioned as part of the definition of universal service; indeed, equal access is nor a "service" at all. Overall, these factors are probably not dispositive. but they certainly cannot be said to support adding equal access to the list of supported services.

The final factor — the public interest, convenience. and necessity — weighsheavily against requiring equal access for the reasons discussed above and because of the competitive state of the interexchange marketplace. **As** noted above, requiring CMRS camers to provide equal access as a condition of becoming ETCs (or retaining existing ETC status) would frustrate local cornpetition by deterring entry. I also believe that the imposition of substantial costs on wireless carriers that choose to implement equal access would be pointless. because it is unlikely that consumers would choose a different interexchange carrier than their wireless provider. Most wireless carriers now offer bundles of minutes that include long distance at no extra charge. In light of the widespread availability of such beneficial packages, it seems doubtful that a consumer would choose to pay an additional charge to obtain service from a different long

[186] Reply Comments of AT&T Corp ai 14.

[187] *Id.*

[188] **Reply** Comments of WorldCom at **4** (citing Comments of Bell South ai 5) ***See also*** SBC Reply Comments at **2;** Verizon Reply Comments at 6.

distance provider. IXCs presumably have made the same judgment. as evidenced by their conspicuous lack of support for a new equal access requirement.

Looking at the telecommunications markerplace as a whole — which is more competitive than ever before, and which is moving away from artificial service-category distinctions based on geographic boundaries — I am frankly puzzled by the argument that we need to adopt an intrusive and backward-looking regulatory requirement for CMRS camers. Indeed. as the Commission is considering whether equal access obligations continue to be necessary even for *LECs*,[189] I would think that the case against extending equal access obligations to CMRS carriers would be far less controversial.

3. The Commission Will Address Concerns About the Provision of Support to Competitive ETCs in an Upcoming Rulemaking.

In light of the overwhelming arguments against adding equal access to the list of supported services. I believe that proponents of such a requirement are allowing their concerns about the manner in which CMRS carriers receive universal service suppon — *i.e.*, our portability rules — to complicate what otherwise would be a straightforward matter.[190] I agree that the question whether CMRS carriers should receive support based on incumbent LECs' costs — including the cost of providing equal access — is a legitimate one.[191] Indeed. I have repeatedly urged the Commission to initiate a rulemaking proceeding focused on that question, something the Commission is now planning.[192] That is the forum we should use to address potential inequities in our portability rules. While it may be several months before the Commission is able to launch that proceeding. and there Is no assurance that the Commission ultimately will modify its rules, that uncertainty does not justify using this definitional proceeding to saddle wireless camers and consumers with new costs under the guise of regulatory parity.

---

[189] *See Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*. CC Docket No 02-39. Notice of Inquiry. FCC 02-57 (rel Feb 28. 2002)

[190] *See, e.g.*, Recommended Decision at ¶¶ 82-86

[191] Notably, however. there is considerable debate over whether wireline carriers in fact receive suppon associated with providing equal access. ***Compare*** **Ex** Pane Prescnwrion of GVNW Consulting. June 19,2002 (contending that rural ILECs receive universal service suppon for providing equal access) *with* **Ex** Pane Presentation of Competitive Universal Service **Coalition, June** 12, 2002 (contending that mral ILECs do *nor* receive any support for providing equal access)

[192] ***See.*** *e.g.*, *Multi-Association Group (MAG)* ***Plan for Regulation of Interstate Services*** *of* ***Non-Price*** *Cop* ***Incumbent Local Exchange Carriers and Interexchange*** *Carriers*. FCC 02-171. CC Docket Nos. 96-45, 00-256, ¶ 15 (rel. June 13. 2002).

SEPARATE STATEMENT OF COMMISSIONER C. NANETTE THOMPSON, REGULATORY COMMISSION OF ALASKA

Re Federal-State Joint Board on Universal Service, Recommended Decision (released July 10. 2002).

1 am writing separately to further explain my vote on the equal access issue. Imposing the requirement thai all ETCs provide equal access will limit the number of camers able to serve the rural and remote parts of our nation and increase the cost of service. There are still some communities in Alaska where local providers do not provide equal access because no competing interexchange carrier directly provides service. Making equal access a condition of ETC status will present these local camers with the choice of nor receiving high cost support or prematurely upgrading their equipment and increasing the cost of service.

I am also concerned that requiring an ETC to provide equal access may discourage or delay provision of non-wireline services in high cost rural areas. Rural and remote areas should not be left behind as the rest of the country realizes the benefits of recent dramatic advances in telecommunications technology. If a new technology can provide service to unserved and underserved areas at a lower cost than the existing network, then the universal service programs should encourage the deployment of that technology. The long term viability and sustainability of the universal service find is dependent on its efficient use to assure affordable access to the national network.

The equal access debate has often focused on whether inequities will occur if wireline ETCs are required to maintain equipment necessary to provide equal access while wireless ETCs are not. I believe that this debate misses the key problem we must face to balance the policy objectives ofcompetition and universal service in the rural parts of our nation; the portability of universal service support Current rules allow competitors to receive support based on the incumbents' costs, capped by the UNE rate if the competitor is using the incumbent's network *to* provide service. **47 CFR** 54.307. This portability rule, coupled with the remainder of the **FCC's** universal service regulations, appropriately encourages the deployment of more cost efficient technologies, but may lead to excessive growth of the fund as the com etitor adds new lines and as incumbents' costs are redistributed over a reduced number of lines.[193] Universal service fund rules need to be modified to insure that the appropriate costs of the carrier providing service are recovered. but that the support intended to equalize the cost of service to consumers nationally is not being used to create artificially competitive markets. I hope that the joint board has the opportunity to address these issues in the near future.

---

[193] See Founeenih Repon and Order. Twenty-Second order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 9615. and Repon and Order in CC Docket No. 00-256, FCC 01-157, released May 23, 2001, at *paragraph* 207. The FCC states:

> [S]upport provided to competitive eligible telecommunications camen is not subject io the overall cap on the high-cost loop fund. During the five-year penod. excessive growth in the fund is thus possible if incumbent camen lose many lines lo compeuiive eligible telecommunications carriers, or if competitive eligible telecommunications camers add a significant number of lines.

SEPARATE STATEMENT OF COMMISSIONER BOB ROM'E, MONTANA PUBLIC SERVICE COMMISSION CONCURRING IN PART AND DISSENTING IN PART

Re: Federal-Stale Joint Board on Universal Service. Recommended Decision (released July I0. 2002).

I. ISTRODUCTION.

I greatly respect the care. thoughtfulness and hard work that underlie the majority's Recommendation. both by the Joint Board members and by the staff. This is an exceptionally committed joint board.[194] I concur in the great majority of the Recommendation. I write separately because I dissent from significant portions of the Recommendation. because I wish to explain my reasons for joining in other portions. and because in too many places the tone and analysis used to reach specific conclusions strike me as unintentionally adverse to rural interests. I support Commissioners Martin and Copps suggestion for further proceedings. and encourage that one foundation for such proceedings be the "No Bamers" recommendation of the Rural Task Force.

Section 234 of the Act is perhaps the section of the Act that has best proven its value. Today many customers served by small rural companies receive the benefits of High Cost Fund support in the form of significantly higher quality service than could possibly be available without suppon. Efforts to improve or reform universal service should start with this recognition. Section 254 is not the problem. Rather, it provides powerful tools to ensure that rural and high cost areas receive services and rates that can reasonably be compared with urban areas.'"

I am concerned that this Recommended Decision may lead to harm to rural areas through a simplistic application of section 254 that fails to recognize the complexity of calculating cost-based universal service support. I am concerned by the approach that the majority seems to take regarding the issue of fund size. I am concerned that the majority fails to take sufficient account of widespread public access to and use of the Internet and the importance of digital communications to all citizens. Finally, I am concerned that the Joint Board is here bypassing an opportunity to recognize transport as an essential element in providing local exchange service in remote areas. Taken together, these problems prevented me from fully concurring in this Recommendation.

II. FUND SIZE.

[194] Appropriate to the hign level of Joint Board members' engagement with referrals. 1 suggest the deliberation process be modified to allow some more formal "discover?" or daw request and response process to develop the record on subjects that arc raised but not adequately developed to decide through the comment and reply process. Such a process would have given us a much bener record lo address a range of issues in this proceeding. The recent contribution method en banc was a notably successful effort io enrich the deliberative process.

[195] The Members of Congress who labored so hard io craft Section 254 would likely be surprised by h e majoriiy's assertion (in Paragraph 2) that Section 254 merely "codified h e Commission's historic commitment." It did much more.

The Act prescribes in several places that support to rural. high-cost and insular areas must be sufficient."[196] Nowhere does the Act say that more than sufficient support is good or bad. Yet. beginning in the first paragraph where the Recommendation "balances" fund size against the availability of "fundamental" telecom services. the majonty nearly makes limiting the fund size the lodestar that orients the work of this entire proceeding. Many decisions have been influenced by the desire to avoid increasing the amount of suppon that might follow an addition to the list of supported services.[197]

While legitimate as a consideration. I want to note thar this concern may in some cases be entirely misplaced. The majority seems to assume that increased services lead inexorably to borh increased cost and a larger universal service fund. The former is probably true. but the latter could easily be false. The existing suppon system for large carriers is based upon the distribution of costs among the states. **A** carrier gets support only if its state average costs exceed 135 percent of the national average. If no state had costs above 135 percent of the average. support would fall *to* zero.[198] Only eight states are now above this threshold. A new service thar adds costs would affect the amount of suppon based on how it affects the distribution of costs. It may seem a seeming paradox to some, but adding certain kinds of costs could actually reduce fund size. because it increases the national average cost.[199] This may be precisely the kind of cost increases that are at stake with plant to suppon advanced services.[200]

In the key area of advanced services. the majority has taken a negative view of the record. emphasizing the incremental costs of completing a broadband rollout. The majority overlooks, for example, the substantial progress that many small rural companies have already made in providing their customers with broadband service. According to the several year-old NECA

---

[196] 47 U S C § 252(b)(5), (e)

[197] For example. the majority expressly states that adding soft dial lone would be contrary to the public interest because the Joint Board is unclear about the effect it would have on the size of the universal service fund. ¶ 29.

[198] The hold-harmless provisions would delay the effect. however

[199] For example. if every large carrier's cost increased by $10 per line per month. the distribution would be compressed Fewer carriers would be above 135% of the new and higher national average cost, and fund size would decrease.

[200] In his written statement (pp. 3-4) to the Joint Board's recent en banc concerning the universal service contribution method. Dr Bill Gillis, an economist specializing in rural economic development, who chaired the Rural Task Force, made the following relaied point:

"Thr unanimous agreement of Rural Task Force members representing RLECS. CLECs. conrumcr advocates. and IXCs was not forged simply on a desire that advanced services be more widely available in areas served by Rural Telephone Carriers More broadly, the members recognized that public interest and Congressional intent expressed in Sections 254(b)(2) and (3) is served by ensuring the universal availability of a network capable of providing a wide array of profitable information services. To the extent an upgraded plant within the public switched network enables a higher proportion of necessary revenues to bc achieved directly through market transactions and smaller subsidies are required to justify the business case for investment. the future cost of universal service can be reduced. However, if public policy including sufficient universal service funding hampers the deployment of advanced service capable infrastructure in high cost rural locations, consumers are more likely to be required to pay a higher level of universal service dollars over the long-run as profitable information service options are not available to produce critical revenues to 'buy-down' necessary universal service support In short, the 'no-bamers io advanced services' recommendation is intended to maximize potential pnvate market leverage to support rural telecommunication needs and minimize the cost of future subsidies."

Rural Broadband Cost Study. about 65 percent ofthe lines served by small rural carriers will be capable of providing broadhand service by 2002. This fact. coupled with the ambitious rollout of data-network services by rural carriers. show that rural telephone companies are trying to meet their customers' needs for high-speed lines.[201]

I do not support spending universal service funds for items that do not provide increased value to end-users. I do think the principal concern of the Joint Board should be to ensure that support is at least sufficient to achieve the goals of section 254.

111. COSTS OF SUPPORTED SERVICES.

The Recommended Decision recites the statutory sections governing the list of supported services. Perhaps because they believe the statutory interpretation straightforward. however. the majority does not discuss how those sections should be applied to the present task. Upon consideration, the required analysts is less straightforward and more complex. I do not believe the Joint Board can make sensible recommendations about what services should be on the list without first clarifying how the list will be used. I would have included more discussion about how adding a service to the list. or withholding a service from the list, affects costs and universal service support.

The list of services can potentially answer three different questions:

1. *What services must a telecommunications carrier offer before it can* ***be*** *certified as an ETC and receivefederal support?*
2. *When support is calculated, what costs are included!* (Today, federal support is based on costs.)
3. *To what purposes may carriers apply federal support?*

Some believe that "the list" of supponed services simply and directly answers all three questions in the same way. I believe a more nuanced approach is required, particularly in answering the first two questions.[202] Ignoring the difference between the questions could ultimately harm rural customers and universal service goals.

---

[201] In Paragraph 15, the majonty presents the worst-case view of the NECA study. citing onl) the S10.9 billion total cost That study also dcscnbes how many rural carriers have upgraded plant. shonencd loops. and stand ready to deploy DSL to most of their exchanges for a relatively small incremental cost Fur the 1 6 million lines within the Central Dial Office Serving Area (CDOSA). the incremental cost of upgrading to DSL was estimated at S 8 billion. For the one million lines outside the CDOSA, the estimated incremental cost of upgrading was $4.5 billion The S10.9 billion total was driven by the $5.6 billion cost of providing DSL access to .6 million "isolated" customers. The Rural Broadband Cost Study is available at http:/ www. neca org/bband3 asp. Funher. the NECA study expressly did not model non-DSL last mile access paths, which might be panicularly useful in serving isolated customers

[202] I regret thar our notice in this proceeding did not more fully explore this issue. If it had, we would likely have received more informed and understandable comments. As it stands, comments of the parties are occasionally difficult to parse. Many comments appear to be based on implicit assumptions about the effect of adding a service to the list, but without clearly explaining whether the argument was addressed to the minimum requirements for ETC eligibility or the mechanics o f calculating support.

The great majority of the Recommended Decision is properly about the first question. Our recommendations here. and the FCC's final action on the list. will define the minimum service requirements for certification as an Eligible Telecommunications Carrier (ETC). No carrier should receive federal support thai does not offer this floor level of services.

Yet even as to this simple issue. there is some ambiguity because the list is not really a list of services. In most locations. a consumer may not be able to purchase separately a single "service" now found on the existing list.'"' I am not aware that any customer, for example. can elect not to interconnect with the interexchange network or to waive emergency coverage. In that sense the list essentially describes the minimum permissible features or elements of local exchange service." The Recommended Decision acknowledges this by charactenring the services list as a "functional" definition. The list describes the functions that the network must perform for local exchange customers.

It is as to the second question, allowable costs. where I see risk from today's Recommendation. The Recommendation recites the Act's requirement that support be provided only to those services that are supported[205] and thus that are "on the list." In my view, the Joint Board and the Commission must apply this section in a way that makes sense in light of the overall purpose of that statute and the practical workings of existing support programs. I would hare preferred that this Recommended Decision explain that the costs that are allowed in calculating support cannot be determined directly and solely by considering the "*services*" on the list.

Fundammtally, this is because suppon today and tor the foreseeable future is based on the cost of purchasing, installing and operating *facilities*. This is true whether the support calculation is based on embedded costs or forward-looking cost. The existing cost-based support systems are necessarily complex [206]

A second important fact is that nearly all telephone equipment is used in common. Loops provide not only "listed' local exchange. operator and emergency services but also "unlisted" toll and broadband services. Switches provide not only "listed" services such as dial tone and DTMF signaling but also the "unlisted" service of equal access to interexchange carriers. **As** a result. a support calculation today includes some method to allocate cost between listed and unlisted services. The "list" of supponed services can provide a guide to that cost allocation, [207] but the mapping is inexact. The outcomes are based on dozens. possibly hundreds, of decisions about what costs should be allowed in support calculations. Judgment is required to align the list of services with facilities and facility costs with support

[203] Tone dialing at least may in some areas still be an elective service. hut in many other areas is available without charge

[204] I **know** of no customers, for example, who may elect individually to pay or refrain from paying an E-911 surcharge Nor may any customers **waive** connection to the interexchange network. another item on the list.

[205] 47 U.S.C. § 254(b).

[206] The Recommendation's discussion in footnote 43 gives hope thai this concern may be more fully **addressable in** the future

[207] For example, the Commission's Synthesis Cost Model performs calculations to **exclude** a ponion of h e interoffice trunking network to account for toll usage, an unlisted service.

I would have recognized this complexity in the Kecoinmended Decision because a decision to include or exclude a service from the list might he read in the furure as endorsing changes in allowable costs. possibly leading to suppon reductions in rural and high-cost areas. The majority implicitly recognizes this problem for advanced services, where the problem arises most conspicuously. Both rural and nonrural carriers today receive support based on cost calculations that include at least some broadband facilities. For large nonrural camers. support is based on the Synthesis Cosr Model. which includes some loop facilities beyond that required merely for voice communications.[208] For rural carriers. support is based on embedded costs. Some costs of broadband plant can legitimately be,[209] and frequently are. the basis for federal cuppon to these rural carriers.

IV. A "NO BARRIERS" PATH FORWARD.

I am pleased that. in Paragraph IS, the Joini Board here endorses the Commission's earlier statement from the Rural Task Force order that Commission policy should not impede the deployment of plant capable of providing access to advanced or high-speed services.[210] This should minimize the nsk that this Recommended Decision will he used in the future to eliminate costs or reduce support for advanced services. Il should also provide some encouragement to camers to continue investing in forward-looking technology.

The Commission's Rural Task Force statement was a paraphrase and abridgement of the more derailed Rural Task Force recommendation.[211] I am disappointed that the majority has not endorsed the Rural Task Force recommendation in full. *To* the extent that the Joint Board does not deal here with the "no barriers" issue in detail. I hope that it will do so in another context in

---

[208] **That** model's parameters are set to design loops suitable for some DSL services. even though such loops may be more costly than those needed merely to provide voice scrvtcc. The model limits loop length at 18,000 feel, thereby enabling "ADSLI" services but not "ADSL2" services 5th Rcpon and Order ¶ 70.

[209] Rural carriers receive loop suppon based on costs that. under P a m 32 and 36 of the Commission's rules. qualify as category 1.3 cable and wire (loop) or category 4 13 central office equipment (circuit equipment)

[210] In its Rural Task Force Order the Commission agreed with the Rural **Task** Force that the FCC's "universal service policies should **not** inadvertently create barriers to the provision of access to advanced services," and slated that "[we] believe that our cunent universal service system does not create such barriers." 14th R&O (Rural Task Force) Executive Summary

[211] The Rural Task Force "no barriers to advanced services" policy including the following principles

a) Universal service funding should support plant that can, either as built or with the addition of plant elements. when available, provide access to advanced services State commissions could facilitate this infrastructure evolution and may make an exception for camers with functional hut non-complying facilities

b) Telecommunications camers should be encouraged by regulatory measures to remove infrastructure bamers relating to access to adranced services.

c) The federal universal scrvice support fund should bc sized so hat it presents no barriers io investment in plant needed to provide access to advanced services Specifically. to remain "sufficient" under the *1996* Act, the fund should be sized so that investment in rural infrastructure will be permitted to grow

the immediate future.'" "No barriers" should be the basis for the further proceeding suggested by Commissioners Martin and Copps. To the extent high cost fund and other support facilitates the construction of robust. forward looking networks, in manv cases it is probably less important that specific services or "applications" residing on a network be supponed. However, this is a topic to be explored, I hope. in the called-for proceeding.

The scope problem applies to more than advanced services. For example, the Joint Board here recommends that soft dial tone should not be a supported service. Yet some stares now require that their local exchange carriers must provide soft dial tone. Providing this service can increase the camers' loop investment. I agree with the majority that providing soft dial tone should not be a minimum qualification for certification as an ETC. **At** the same time. however. I am concerned about the possible effect of this recommendation on cost recovery In states where soft dial tone is required, the Joint Board should say that any incremental costs associated with soft dial tone should continue to be included in federal suppon calculations."'

In order to reduce the risk of such unintended results. I would have included in today's Recommended Decision a broader discussion of the differences between ETC desipnation and calculating support. In my view, the "floor" or "core list of services" for ETC certification under question #I need not be, should not be. and realistically cannot be the "ceiling" for cost recovery under question #2. The floor standard is a level below which no ETC may venture. but above which costs often are and should be recognized. I would also have said that the size of the difference between the floor and the ceiling can be affected by a variety of factors. such as the difficulty of including or excluding certain costs. the need to recognize legitimate state requirements on local exchange carriers and the desire to encourage broadband deployment.

If this Recommended Decision had clarified these issues, I think the groundwork would have been laid for a more sensible policy on promoting advanced services, particularly in rural areas. By failing to clarify this difference, the Recommended Decision not only passes this opportunity by. but it leaves rural areas vulnerable to future exclusions for costs associated with services that, for other reasons, we have recommend here should not be added to the list.

V. DIGITAL CONNECTIVITY.

The Recommended Decision does not respond adequately to the dramatic evolution of the network and of consumer usage of the network to digital communications. While I agree with the majority's ultimate recommendation not to include specific advanced services in the list of minimum services at this time. today's recommendation leaves undisturbed an outdated concept of universal service from 1997 that is based entirely on traditional voice service. Today's recommendation does nor alter the list of core services in any way that reflects the increased importance of the Internet, and of digital communications generally, to residential

[212] In the Rural **Task** Force Order the Commission "commit[ted] to further consideration of the Rural Task Force's proposed 'no barriers io advanced services' policy in the future." *14th R&O* (Rural Task Force) *Executive Summary.*

[213] Similarly. the majority concludes here ihar Expanded Area Service should noi be a supponed servicc. I agree that providing **EAS** should not be a minimum requirement for ETC certification. Bui **EAS** calling is required in some states as a pan ofthe duties of local exchange carriers I am concerned thai, where **EAS** is required, today's decision **may** be the basis of a future decision to allocate away loop and switching costs associated with **EAS** facilities

customers Nor does it acknowledge that some customers still cannot reliably access the Internet because of inadequate analogue local or interexchange facilities.

Section 254(c)(2) states. "[t]he Joint Board may, from time IO time. recommend to the Commission modifications in the definition of rhe services that are supported by Federal universal service support mechanisms."[214] Section 254(c)(1) also states that "[u]niversal service [is] an evolving level of telecommunications services" and that the Commission shall "tak[e] into account advances in telecommunications and informarion technologies and services."[215] Moreover. the Act directs the Joint Board to base its policies on principles that ensure that all parts of the country have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas.[216] Finally, the 1996 Act's legislative history shows the Commission has "specific authority to alter the definition from time to time" in order *to* "take into account advances in telecommunications and information technology."[217] These statutes read together suggest a broad conclusion. Universal service policies should not lead the parade to deploy advanced services; but neither should they fall so far behind that the parade is altogether out of sight. (And. in Section 254, Congress made clear that citizens in underserved and unserved areas shouldn't be the shovel brigade at the technology parade's end.)

The Commission last acted on the question of Internet connectivity in 1997. At that time, it determined that voice grade access to the public switched network "usually" enables customers to secure access to an Internet Service Provider, and, thus, to the Internet. It declined to add higher quality links *to* the list of required services. in part because the record did nor show that a substantial majonty of residential customers then subscribed to Internet access using high-speed access links: [218] As a result, the list of supported services is today entirely silent on digital transmission. In 2002, a carrier can receive federal support even though it does not provide a method for its customers to connect to the Internet.

As the majority recognizes, the situation has changed significantly since 1996 when the Act passed. Not only has Internet connectivity become commonplace, but broadband is more widely available. As noted by the majority, 56.5 percent of all households have computers and could benefit from advanced or high-speed services. Also, about half of all households today subscribe to some form of Internet access. I agree that this is not yet the "substantial majority" of residential customers mentioned in the statute. However, it does provide a solid basis for a recommendation of some form of digital connectivity."[219] Even broadband service is now

[214] 47 U.S.C. § 254(c)(2).

[215] 47 U.S.C. § 254(c)(1).

[216] 47 U.S.C. § 254(b)(3).

[217] Joint Explanatory Statement at 131

[218] First Report and Order, ¶ 83.

[219] The Commission has already determined thai all four criteria cnumeraied in section 254(c)(1) **must** bc considered, but not each necessarily met. before a service may be included within the general definition of universal service, should it bc **in** the public interest. The Commission has flexibility io establish a definition of services io be supported. after it considers the criteria enumerated in section 254(c)(1)(A)-(D). *First* ***Reporr and Order***, ¶ 61. For this reason, the Commission today could establish a minimum digital connectivity standard, if it wished, even though something like a bare majority of customers today uses ihai servicc.

reportedly widespread. High-speed Internet access servicc is now reporredly available to approximately 75-80 percent of all the homes in the United States via DSL or cable modem service.[220]

These data illustrate the contrast between the digital "haves" and "have nots." The majonty of customers nor only has availability **of** Internet access. but also has availability of broadband Internet access. By contrast. in some parts of the country carriers can provide marginally satisfactory voice service. but their networks do not support modem use. A modem connected to such a telephone line does not work. It is still usually true. as the Commission noted in 1997. that a voice grade circuit allows digital communication using a modem. But it is still not universally true. This is precisely the kind of difference that Congress tasked the Joint Board to eliminate. The problem is exacerbated by the fact that the Commission and Joint Board may leave this question undisturbed for another five years.

Both the Congress and the Commission are also currently seeking ways to expand broadband deployment. In a ruling earlier this year. the Coinmission declared that cable modem service is an "information service.'' The Commission explained that its "overarching goal" in this decision was "to "encourage the ubiquitous availability of broadband to all Americans".''' Bills pursuing the same goal have been considered in the Congress. If it is important to make broadband Internet available to the last *25* percent of the population, 1 think it should be urgent to provide rudimentary digital access to the fewer people who cannot today connect to the Internet at any speed.

The notice here asked abour analog bandwidth, but not digital throughput.[222] **As** a result, the record offers little concerning the costs or benefits of a digital throughput requirement, and not enough is yet known about costs or benefits to make a specific recommendation. Customers today typically buy modems capable of speeds of 56,600 bps, and throughput rates on voice lines in urban areas increasingly exceed 28,800 bps.[223] However, the record here is not adequate to form conclusions on the prevailing level of service in urban areas. Moreover, it might be unduly expensive or disruptive to adopt a 28.8 or 56.6 standard without a longer delay for implementation. Perhaps a more appropriate, alrhough conservative. minimum standard would be the older modem standard of 14,400 bps.

As to both the speed required and implementation of the requirement. a variety of options are available. Most of them would have been greatly preferable to the status quo.

I disagree with much of the reasoning offered by the majority for its conclusions on broadband and analog bandwidth. For example. the majonty asserts that adding advanced or high-speed services to the list could jeopardize support currently provided to some carriers."'

---

[220] The data also show ihai relatively few customers purchase broadband. even where ii is available.

[221] *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, *GN* Docket No. 00-185, *Declaratory Ruling and Notice of Proposed Rulemaking*, rel'd Mar. 15, 2002, ¶ 4

[222] Bandwidth **is** a more neutral metric, more consistent with a "no barriers" approach. and in my view more relevant to whai we should really be considering.

[223] Tu manv. 28.800 bps is considered functionally inadequate for increasingly data-inlensive **Internet** communications.

[224] Para 17. From my expeoencc, it is also difficult tu conceive of substantial material risk ihai investments in "mature narrowband technologies" (Paragraph *23)*. either wireline or wireless, will become obsolete or stranded any time soon.

(continued....)

This problem could be easily avoided by granting a reasonable delay for implementation. something that has often been done in the past when new services were required[225] and that (on a divided issue) the Recommended Decision itself suggests tor equal access.[226]

The majority states that a network transmission component of Internet access. whether it is 14.4, 28.8, 56, or some other speed. is not "essential lo education, public health. or public safety" at this time. because no community or public services agencies are available exclusively over the web."[227] It would almost certainly be incorrecr to state thar the Internet is nor a primary means for accessing many essential senices. although the record is not well developed. The notice here never asked about the implications of a digital transmission standard. only analog bandwidth. **As** the majority notes. analog bandwidth has several additional complicating factors. Therefore many of the comments received focused on the technical issues surrounding analog bandwidth. and little was said about the value of digital connections.

Moreover, the majority does not properly apply the statutory test. The question should not be whether community or public service agencies are available exclusively over the Internet. The statute does not require the Joint Board to prove this much. One problem is that the majonty test is overbroad. If applied consistently, it could sweep more than Internet connections off the list of supported services. Basic telephone service itself could be suspect, since few community or public agencies are known to conduct transactions only over the telephone.

The more fundamental problem is that the majonty does not adequately recognize the important benefits that the Internet today provides to its users. Those benefits span all three categories listed in the statute, educarion, health and safety It is not hard to see that at least under at least some circumstances these uses can be "essential." Education is available online in locations not served by traditional institutions, and the Internet allows students in remote rural areas to obtain basic and even advanced education to which they would otherwise have no access. Detailed health information can be obtained online. and Internet users frequently use this information to augment the advice of the family doctor, sometimes even to avoid an unnecessary visit. Public safety warnings are now routinely posted on the Internet for weather events, and in a national or regional emergency the Internet could prove to be as important a means of communication as the radio, providing additional functions not available through broadcast communications.[228] In addition. the importance of Internet connectivity is now recognized by

---

(...continued from previous page)
Here and elsewhere, pans *of* the Recommendation almost assume a "lowest common denominator" approach io reconciling competition and universal service policy From the perspective of rural telecommunications users, encouraging competition to provide excellent service might produce more noticeable benefits.

[225] In 1997, the Commission granted in three limited instances a reasonable period during which otherwise eligible camers were allowed to complete network upgrades required Tor them to begin offering certain services that they were initially incapable ofproviding. First Repon and Order, para. 89. Rural Utility Service programs also provide relevant examples of encouraging the phased upgrade of telecommunications networks

[226] Pan. 86

[227] Para. 25

[228] The Internet could be used, for example. to coordinate volunteers after a natural disaster or to provide detailed information aboui the progress *of* a Forest fire

the Commission's recent decision affecting the telecommunications relay service program.[229] I would have preferred that this Recommended Decision conclude that Internet connectivity, at some speed. is essential to education, public health or public safety.

In sum. it may not yet be time to make advanced services a floor service required of all carriers. But it is long past time to make Internet connectivity, at some speed, a minimum standard for telephone service everywhere in this country Widespread Internet usage. extensive broadband availability. and broad support for ubiquitous broadband deployment all argue for adding a modest digital connectivity requirement io the list. In my view. the Joint Board should **ask** the Commission to make an explicit commitment to address this matter by issuing a further notice.

VI. TRANSPORT.

The majority has chosen not to address fully here the question ofproviding support for carriers with very high transpon costs. I would recommend examining this issue as soon as possible because very high unsupported transport costs are the primary barrier to establishing telephone service *in* certain remote areas.""

Transport facilities are a part of the public switched network. They are a network functionality and thus are not a consumer service or "function" that has previously been listed under section 254(e). Nevertheless, transpon facilities are essential to many of the functions that are on the list, including: voice grade access to the public switched network; access to emergency services; access to operator services; access to interexchange services; and access to directory assistance. Moreover, the value of local exchange service would be almost totally undermined without transport. In many areas, interoffice transport is used even for "local" calls that involve two switches in the same local calling area. Thus without transport, some customers could only call other customers in their immediate community.

Transpon costs are not uniform, and they are particularly high in some very remote areas. Where customers are clustered but are otherwise remote from other communities. transport costs can even exceed loop costs. which ordinarily dominate rural local exchange costs.

The current support mechanism for rural and non-rural carriers does not recognize all transport costs. For rural camers, there is no transport support at all. Thus, even though supported services depend upon the transpon function. not all or in some cases none of the high costs of providing the transport function are covered. As a result, a carrier with high transpon costs may be unable to provide all of the services required to maintain its eligibility for support and at the same time keep rates at affordable and comparable levels. This can produce high toll rates in areas where transport costs are pooled and the continued absence of any telephone service in areas where they are not. High transport costs may also be a critical impediment to the

[229] ***Provision of Improved Telecommunications Relay Services and Speech-io-Speech Services for Individuals with Hearing and Speech Disabilities. Petition for Clarification of WorldCom. Inc.***, **CC** Docket No. 98-67, Declaratory Ruling and Second Funher Noucc. FCC 02-**I2**1 (rel. April 22. 2002) (**"*Declaratory Ruling*"**)

[230] See my **separate** statement in the Joint Board's Recommendation concerning the Rural **Task** Force Report, **Pan** B, "Unserved and Underserved Areas," **for** additional discussion of this issue.

ability to provide larger local calling areas to customers in remote communities at a reasonable cost.[231]

Despite its importance to some remote areas. I concur with the majority that support for transport costs is not an issue that can be addressed here. Here the question *is* which services should be required of each Eligible Telecommunications Carrier, and which services and facilities are eligible for support. not which facilities generate the costs recognized in the suppon calculation. Still. I think the problem is so significant that it needs to be addressed promptly. I recommend that the Commission initiate a proceeding to address supporting the transport costs of rural and non-rural carriers and the effect of that support on availability of services and the comparability and affordability of rates. The Joint Board should address the issue as soon as practicable, considering the other issues before it.[232]

VII. CONCLUSION.

I appreciate the Joint Board's hard work on this referral. The int Board has an ambitious and important agenda before it. 1 hope it will be able to address the matters raised in this opinion. and look forward to participating in that work.

[231] This would also hc a partial, constructive response to comments received in this proceeding by. among others. the US Conference of Catholic Bishops and the State of Alaska Further, transport is a key. hut often-neglected clement in Internet access. Last year-s NECA Middle Mile study. concerning the cost of transporting rural Internet traffic from an ISP to an Internet backbone provider is relevant and useful. http:ltuw\r neca.org/midmile htm.

[232] The Recommendation. states that the Joint Board will take up transport costs in he pending referral of the remand of the Ninth Repon and Order. following the remand from the Tenth Circuit Coun of Appeals. Para. 57. I note the Ninth Repon and Order concerns the large "nonrural" carriers and thus is unlikely to address transport issues for small rural carriers Funher. reply comments in that proceeding were due earlier this Spring. I trust the Joint Board is prepared in that proceeding specifically to consider the effects of the lack of support for transport on both large and small carriers. and also to develop an adequate record concerning transport. including reopening the record if necessary

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN APPROVING IN PART AND CONCURRING IN PART

Re: Federal-State Joint Board on Universal Service, Recommended Dectsion (released July 10, 2002).

I wish to thank all my colleagues on the Federal-State Joint Board for their hard work and contributions in the effort to reach consensus on the important issue of determining which services should be supponed by the federal universal service program.

Today's recommended decision reaffirms our commitment to preserve and advance universal service by ensuring the affordability and availability *of* telecommunications services in all regions of the Nation. Moreover. the Joint Board's recommendations in this item are consistent with our statutory mandate to protect the sufficiency of the universal service support mechanisms.

While 1 generally suppon the recommendations in the decision, I would have been willing to also recommend a further Notice to obtain more data on how, and to what extent, the federal universal service support mechanism could assist the deployment of advanced services, or at least the removal of barriers to such deployment. panicularly in rural, remote and high cost areas throughout the country

Congress did not envision that services supponed by universal service would remain static. Instead, it views universal service as an evolving level of telecommunications services. With each passing day. more Americans interact and panicipate in the technological advances of our digital information economy. Deployment of these telecommunications and information technologies support and disseminate a greater amount of services essential IO education, public health and safety. **A** modem and high quality telecommunications infrastructure is essential to ensure that all Americans, including those residing in rural communities, have access to the economic, educational, and healthcare opportunities available on the network. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas, as well as provide a platform for delivery of advanced services.

As such. it is imperative that the Commission have adequate and updated information on the state of technological developments, network infrastructure deployment, and any potential barriers that may exist in order to ensure that the services designated for suppon reflect the evolving nature of technology.

In my view, pursuing a further Notice at this time would assist the Commission in its continuing effort to ensure that all Americans. including those in rural and high cost areas, have access to these services.

SEPARATE STATEMENT OF COMMISSIONER THOMAS J. DUNLEAVY, NEW YORK PUBLIC SERVICE COMMISSION

Re Federal-State Joint Board on Universal Service. Recommended Decision (released July 10, 2002)

With this Recommended Decision the Federal-State Joint Board on Universal Service completes its first comprehensive re-examination of the list of services that may he supponed by federal universal service mechanisms. It is a distinct honor and privilege to have had the opportunity to participate in these deliberations with the other members of the Joint Board After thorough and thoughtful review of the record in this proceeding. the Joint Board has not recommended expanding that list at this time. 1 wholeheartedly concur in that outcome.

In enacting the universal scrvice provisions of the Telecommunications Act of 1996. Congress clearly articulated the goal of ensuring that Americans in all regions of the country continue to have access to. and affordable use of. an evolving set of fundamental telecommunications capabilities. We must, therefore. he prepared to add services to. and perhaps delete them from. that definition of fundamental or "core" capabilities as technologies improve and our uses of telecommunications evolve.

Equally clearly, however. Congress strictly limited the Joint Board and Commission in how they may define that set of core capabilities. To he included *in* that list, services or capabilities must be 1) "essential to education, public health, or public safety," *2)* "subscribed to by a substantial majority of residential subscribers," 3) "deployed in public telecommunications networks," and 4) "consistent with the public interest, convenience. and necessity" [233] Congress did not give us free rein to provide federal support to whatever service or capability we might personally find compelling; we must follow the lead of the majority in the marketplace in determining what is so essential and widely used that it should he made universally available.

The broad-based federal universal service programs (high-cost and low income) at issue here are not about simply ensuring widespread deployment of services in case some customers find them beneficial. They are aimed at getting every household actually subscribed to the defined basic level of telecommunications. We measure our universal service success by measuring subscription, not homes passed or facilities deployed. Adding any service to the definition ofuniversal service implies that we expect every household to actually subscribe to and pay for that service. In addition, most customers will probably pay higher universal service fees to cover the additional cost of making that service "universal." Hence. the cost of adding a service to the definition is not simply the potential greater burden on the universal service fund, but the potentially higher price of an expanded level of "basic" service for all consumers. It *is* this cost, potentially huge, that in my view we must consider when evaluating whether adding a capability or service would be "consistent with the public interest, convenience, and necessity."[234]

[233] 47 U.S.C § 254(c)(1)(A-D)

[234] 47 U.S.C § 254(c)(1)(D)

Various parties have made appealing cases for adding a variety of capabilities to the list of supported services. Some meet one or more of the Act's criteria; some would enhance worthy social causes: but none meet all four of the required cnteria. I am pleased thar. in the end. the Joint Board's Recommended Decision. consistent with the views expressed by the majority of commentators, is faithful to the universal service framework established by Congress.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS APPROVING IN PART, DISSENTING IN PART

Re: Federal-State Joint Board on Universal Service. Recommended Decision (released July 10, 2002).

This Decision is one of the most important that the Joint Board will consider this year. As the Commission and the Joint Board move forward with other universal service proceedings during the coming months, including an examination of the contribution methodology. it is important that we develop a consensus on the definition of universal service and how to achieve Congress' goals.

Universal service is a critical pillar of the Telecommunications Act of 1996. Congress clearly concluded that a core principle of federal telecommunications policy is that all Americans. no matter who they are or where they live. should have access to reasonably comparable services at reasonably comparable rates. Congress also wisely anticipated that the definition of universal service would evolve and advance over time.

I want to thank my colleagues on the Joint Board for their frank discussions on this Recommended Decision. The Decision is the product of much hard work by dedicated Joint Board members and equally dedicated staff. Nevertheless, I am concerned that today's Decision is not always forward-looking in its analysis For example, as discussed below, the Joint Board seemingly discounts the importance of access to broadband services and to the Internet. In addition, the Joint Board seems overly constrained in its analysis by concerns about any increases to the fund or about the possibility that any change could disadvantage one industry sector or another. I write separately to highlight a few principal areas in which I have significant concerns with the Decision.

Advanced Services

I respectfully disagree with a fundamental premise of the majority in its discussion of advanced services. The majority concludes that advanced services are not essential to education, public health, or public safety because "many such resources are readily accessible through alternative means, such as by voice telephone or dial-up connections to the Internet." By this same logic. maybe telephones should never hare been deemed essential because we had the telegraph.

I believe that advanced services *are* essential. Indeed. they are becoming more so with each passing day. Already, broadband is a key component of our nation's systems of education. commerce, employment, health, government and entertainment. Congress recognized the importance of broadband access in the Telecommunications Act of 1996. Not only did Congress give the FCC and the state commissions the statutory mandate to advance the cause of bringing access to advanced telecommunications to each and every citizen of our country, but it also directed that one of the guiding principles *of* universal service is that "access to advanced telecommunications and information services should be provided in all regions of the Nation." There is no doubting, in my mind, that Congress looks forward to the advancement of advanced services all across our country. But this imporrant objective will not be achieved without such

Finally, although I supported inclusion of equal access in the list of supponed services. I recognize that this issue is a close call as demonstrated by the lack of consensus in the Joint Board. I look forward to reading the comments on this Recommended Decision and. in particular, a discussion of the impact on consumers of including or excluding equal access. For example. if universal service is about connecting all Americans, is it the consumer or the carrier who decides on the services and the identity of the provider that the consumer can access through that connection? In addition, some parties extol the benefits of wireless camers offering consumers service packages that include bundles of any-distance minutes, but I look in vain for an explanation of how inclusion of equal access would preclude such plans. As for the competition issues, some opponents of including equal access state that these issues are relevant to the discussion hut are more properly addressed in a future, hut as yet unlaunched, proceeding. When the equal access issue is addressed by the Commission. I hope we will have the benefit of sufficient analysis on the competition issues to inform our decision-making.

Again. my gratitude goes out to all who worked so diligently to produce this document which now goes to the Commission. There it will receive, I am confident, the careful attention and high priority it so clearly merits.